

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

WADE TUCKER, derivatively for the  
Benefit of and on Behalf of the Nominal  
Defendant HealthSouth Corporation,

Plaintiff,

vs.

UBS SECURITIES LLC, et al.,

Defendants.

CIVIL ACTION NO. CV-02-5212

**UBS SECURITIES LLC'S MOTION TO RECONSIDER**

COME NOW the Defendants identified in the Fourth Amended Complaint as UBS Investment Bank, UBS Group, and UBS Securities LLC (collectively "UBS")<sup>1</sup> and hereby move this Honorable Court to reconsider certain aspects of its ruling of March 3, 2005 denying UBS's Motion to Dismiss the Fourth Amended Complaint and to revise its Order of March 3, 2005 in the following respects:

1. UBS respectfully requests that the language of this Court's Order of March 3, 2005 be made consistent with previous orders issued in this case denying other defendants' motions to dismiss.<sup>2</sup> Specifically, UBS urges that this Court's Order denying

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<sup>1</sup> "UBS Investment Bank" and "UBS Group" are incorrectly identified in the Fourth Amended Complaint because they are non-existent legal entities, and as such, were not parties to any contract or relationship with HealthSouth. UBS Securities LLC is the successor entity to UBS Warburg LLC and Warburg Dillon Read LLC.

<sup>2</sup> The Order denying the Officer Defendants' Motion states in relevant part:

[T]he Court finds that Plaintiff, Tucker, has stated claims against these Defendants and that the claims have been asserted with adequate specificity as required by the Alabama Rules of Civil Procedure and substantive law. Moreover, the Court is of the opinion that it would be premature to dispose of these claims against these Defendants in a motion to dismiss prior to any discovery. Any remaining issues

the various subparts of UBS's Motion to Dismiss "WITH PREJUDICE" is improper at this stage of the litigation. The Court's "WITH PREJUDICE" rulings may be argued, albeit incorrectly, as the "law of the case" in an effort to bar UBS's further pursuit of those defenses and arguments at a later point in this litigation. Clearly, this Court does not intend to foreclose or preclude further consideration of any of these issues at the summary judgment stage or some other stage in this litigation. In fact, the Court's Order elsewhere states that the arguments advanced by UBS "may be addressed later at the summary judgment stage." (Order at 6). Thus, this Court's Order of March 3, 2005 should be revised to remove the "WITH PREJUDICE" language and employ language similar to that used by the Court in its recent orders denying other defendants' motions to dismiss.

2. This Court should revise its Order of March 3, 2005 to dismiss the complaint with respect to non-existent legal entities that have not been and cannot be properly served with process in this case as required by Alabama Rule of Civil Procedure 4(c). Neither UBS Group nor UBS Investment Bank is a legal entity. (*See* Affidavit of Robert J. Giuffra, Jr. attached hereto as Exhibit A).<sup>3</sup> Plaintiff does not dispute this fact. Neither has been served. It is undeniable that each should be dismissed.

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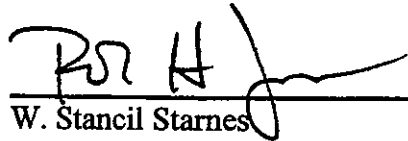
regarding these claims that are being asserted against these Defendants can and will be dealt with at the motion for summary judgment stage and in pretrial orders.

Order Denying Officers' Motion to Dismiss, Sept. 28, 2004.

<sup>3</sup> The Affidavit of Robert J. Giuffra, Jr. was previously submitted to this Court on October 17, 2004 in support of "UBS Securities LLC's Motion to Dismiss the Third Amended Complaint, or Alternatively, to Stay the Action."

WHEREFORE, PREMISES CONSIDERED, these Defendants move this Court to reconsider its Order of March 3, 2005 in accordance with the aforesaid.

Respectfully submitted,



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Jay M. Ezelle  
Robin H. Jones  
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Attorneys for UBS Securities LLC

***Of Counsel:***

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the above and foregoing pleading upon all attorneys of record by electronic mail pursuant to the Court's April 19, 2004 Order requiring the same, on this the 23rd day of March, 2005.

  
OF COUNSEL

**Appendix 3:**  
**All Counsel in *Tucker v. Scrushy***  
**Pending Before The Honorable Allwin E. Horn III**

<b>Party</b>	<b>Name of Person to Serve</b>	<b>Email Address</b>
Tucker, Wade	John Q. Somerville, Esq. Ralph D. Cook, Esq. John W. Haley, Esq. Bruce J. McKee, Esq. Steve P. Gregory, Esq. Frank DiPrima, Esq. Ronald A. Brown, Esq. Edward F. Haber, Esq. Robert C. Schubert, Esq. Juden Justice Reed, Esq. Arthur L. Schingler, Esq.	<a href="mailto:jqs@gallowaysomerville.com">jqs@gallowaysomerville.com</a> <a href="mailto:ralph@hwnn.com">ralph@hwnn.com</a> <a href="mailto:haley@hwnn.com">haley@hwnn.com</a> <a href="mailto:bruce@hwnn.com">bruce@hwnn.com</a> <a href="mailto:spg@diceandgregory.com">spg@diceandgregory.com</a> <a href="mailto:diprimalaw@aol.com">diprimalaw@aol.com</a> <a href="mailto:rabrown@prickett.com">rabrown@prickett.com</a> <a href="mailto:ehaber@shulaw.com">ehaber@shulaw.com</a> <a href="mailto:rschubert@schubert-reed.com">rschubert@schubert-reed.com</a> <a href="mailto:jreed@schubert-reed.com">jreed@schubert-reed.com</a> <a href="mailto:ashingler@scott-scott.com">ashingler@scott-scott.com</a>
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Scrushy, Richard M.	H. Lewis Gillis, Esq. April D. Williams, Esq. Donald V. Watkins, Esq. Thomas V. Sjoblom, Esq. Scott Balber, Esq. Thomas J. Hall, Esq.	<a href="mailto:hlgillis@tmgpc.com">hlgillis@tmgpc.com</a> <a href="mailto:adwilliams@tmgpc.com">adwilliams@tmgpc.com</a> <a href="mailto:donaldvwatkinspc@aol.com">donaldvwatkinspc@aol.com</a> <a href="mailto:tsjoblom@chadbourne.com">tsjoblom@chadbourne.com</a> <a href="mailto:sbalber@chadbourne.com">sbalber@chadbourne.com</a> <a href="mailto:thall@chadbourne.com">thall@chadbourne.com</a>
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# EXHIBIT A



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
(HEALTHSOUTH CORPORATION 2002 DERIVATIVE LITIGATION)

WADE TUCKER, derivatively for the  
Benefit of and on behalf of the Nominal  
Defendant HealthSouth Corporation,

CIVIL ACTION NO. CV-02-5212

RICHARD M. SCRUSHY, *et al.*,

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

AFFIDAVIT OF ROBERT J. GIUFFRA, JR.

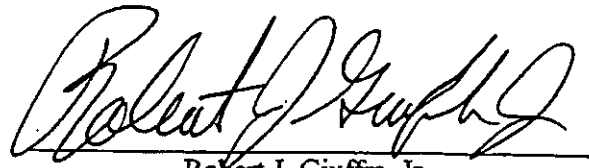
Robert J. Giuffra, Jr., being duly sworn, deposes and says:

1. I am a partner of the law firm Sullivan & Cromwell LLP, counsel for UBS Securities LLC ("UBS Securities"), formerly known as UBS Warburg LLC, in this action. I am a member of the bar of the State of New York.

2. On August 18, 2003, the Third Amended Complaint was served upon UBS Securities, an entity that is not named as defendant in this action. A true and correct copy of the Notice of Service of Process is attached as Exhibit A hereto.

3. As counsel for UBS Securities, I am familiar with the organization of UBS Securities and its affiliates. To the best of my knowledge and belief, neither UBS Group nor UBS Investment Banking is a legal entity incorporated in any U.S. state or foreign country. Rather, UBS Group is a term used to reference numerous UBS entities, including UBS Securities, its affiliates and parent corporation. UBS Investment

Bank is a term that is used to reference the investment banking division of UBS Securities.



Robert J. Giuffra, Jr.

Sworn to before me this  
16th day of October, 2003



Notary Public

**GAURAV I. SHAH**  
Notary Public, State of New York  
No. 025H6083029  
Qualified in New York County  
Commission Expires Nov. 12, 2006


<b>STATE OF ALABAMA</b> <b>Unified Judicial System</b> Jefferson County		Check one (Not for Workers' Comp, PFA, or Small Claims cases): <input type="checkbox"/> District Court <input checked="" type="checkbox"/> X Circuit Court	<b>► FILE No.</b> CV 02-5212
Style of case: Wade Tucker v. UBS Securities LLC, et al		<b>MOTION COVER SHEET</b> Name of Filing Party: UBS Securities LLC	
Name, address, and Telephone No. of Attorney or Party. If not Represented: Robin H. Jones 100 Brookwood Place, 7 <sup>th</sup> Floor Birmingham, AL 35259 (205) 868-6000 Attorney Bar No.: Jon143		To be filled out by Clerk of Court: <input type="checkbox"/> Filing Fee Charged and Collected (Am't \$ _____) <input type="checkbox"/> Filing Fee Not Required (Sm. Work Comp. PFA) <input type="checkbox"/> Affidavit of Hardship Filed	

**Type of Motion (Check One)**

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) <input type="checkbox"/> Intervene or Appear as Third Party Plaintiff (\$297.00) <input type="checkbox"/> Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment (\$50.00) <input type="checkbox"/> Other Dispositive Motion not pursuant to Rule 12(b) (\$50.00) <input type="checkbox"/> Renewed Dispositive Motion (Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment or other Dispositive Motion not pursuant to Rule 12(b) (\$50.00) <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00)	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Contempt <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Discovery <input type="checkbox"/> Ex Parte Restraining <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Plaintiff's Motion to Dismiss or Stipulation of Dismissal <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Show Cause <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Temporary Restraining Order <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <b>X Other Motion to Reconsider</b> pursuant to Rule _____ (Subject to filing fee)

\*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Cost \$ \_\_\_\_\_

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship <input type="checkbox"/>	Date: March 23, 2004	Signature of Attorney or Party: 
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\*This Cover Sheet must be completed and submitted to the Clerk of the Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.  
 \*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

**Ferguson, Kimberly**

**From:** Robin Jones [rhj@starneslaw.com]  
**Sent:** Wednesday, March 23, 2005 4:42 PM  
**To:** jqs@gallowaysomerville.com; ralph@hwnn.com; haley@hwnn.com; bruce@hwnn.com; spg@diceandgregory.com; diprimalaw@aol.com; rabrown@prickett.com; ehaber@shulaw.com; rschubert@schubert-reed.com; jreed@schubert-reed.com; ashingler@scott-scott.com; ebelfi@murrayfrank.com; hlgillis@tmgpc.com; adwilliams@tmgpc.com; donaldvwatkinspc@aol.com; tsjoblom@chadbourn.com; sbalber@chadbourn.com; thall@chadbourn.com; tee@teelaw.com; jch@hsdpc.com; jws@hsdpc.com; jgoyer@mcglaw.com; aenslen@mcglaw.com; pgebhardt@mcglaw.com; jmr@hsy.com; tlk@hsy.com; mkc@hsy.com; flf@hsy.com; pcd@hsy.com; pdb@hsy.com; lmr@hsy.com; danderson@walstonwells.com; Cooper, Julia; ewelch@skadden.com; sdargitz@skadden.com; emich@skadden.com; jcooper@sirote.com; lreeves@sirote.com; rfleishman@steptoe.com; jmh@hsy.com; pgluckow@stblaw.com; akimmel@stblaw.com; fgh@helmsinglaw.com; pcf@helmsinglaw.com; cbq@helmsinglaw.com; mjb@helmsinglaw.com; lcooper@mcglaw.com; jgoyer@mcglaw.com; pcooper@mcglaw.com; cburkhalter@mcglaw.com; jbussian@mcglaw.com; acarle@mcglaw.com; cl@yonshorn.com; pbassett@alston.com; bcollins@alston.com; shurd@alston.com; cdauphin@bddmc.com; dmcknight@bddmc.com; henry.simpson@arlaw.com; sfarina@wc.com; emainigi@wc.com; vrollins@wc.com; Stan Starnes; Jay Ezelle; Robin Jones; giuffrar@sullcrom.com; frawleyb@sullcrom.com; leubat@sullcrom.com; jordanjm@sullcrom.com; mbinion@briskman-binion.com; jhazelton@briskman-binion.com; jdf@jacksonfosterlaw.com; umstakwit@aol.com; jfawal@bellsouth.net  
**Subject:** Tucker v. Scrushy (UBS Motion to Reconsider)  
**Attachments:** 0264\_001.pdf

&lt;&lt;0264\_001.pdf&gt;&gt;

Attached hereto, please find UBS Securities LLC's Motion to Reconsider that was filed with the Court today, March 23, 2005.

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3/23/2005